IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3971 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUKHIBEN W/O CHHIMAKABHAI BHANABHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard Mr. Anil S. Dave, learned advocate for the petitioner and Mr. A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 26-5-99 passed by

respondent No. 2 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that a prohibition case vide C.R.No : 452 / 99 is registered against the petitioner at Surat City (South) Prohibition police station on 9-3-99 and country made liquor as well as the instrument for distilling the liquor were seized from the place raided by flying squad. Furthermore, two witnesses on assurance of their anonymity have given statement dated 28-4-99 and 29-4-99 regarding the bootlegging activities of the petitioner and referring the incidents alleged to have been occurred on 20-3-99 and 16-4-99 respectively. The said statements were verified by the detaining authority on 25-5-99. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that impugned order suffers from the vice of non application of mind inasmuch as the impugned action of passing of detention order is delayed without satisfactory explanation and furthermore, the detaining authority has failed to consider the aspect of less drastic remedy claiming cancellation of bail as available under Section 437(5) of CrPC.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. It is further observed by the Hon'ble Supreme Court that inordinate delay in taking action for detention from the date of actual commission of anti social activities if not satisfactorily explained, is fatal to the validity of the order. Even this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1)

GLH 381 has also expressed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonable explanation for delayed action, the detention order cannot be sustained.

#. In in the instant case also, as stated hereinabove, the grounds of detention is devoid of any explanation, as to why the action has been delayed till 26-5-99 though the criminal case has been registered on 9-3-99 and the petitioner was released on bail on the same day. That thereafter, information through anonymous witnesses have been received in April, 1999 and yet the impugned order has been passed on 26-5-1999. That the grounds of detention is devoid of any explanation for such delay. That no affidavit has been filed by either of the respondents despite due service and as such, in the absence of any explanation much less a reasonable explanation, it is difficult to uphold the impugned order.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. That the detaining authority while formulating the grounds has observed that the detenu / petitioner is on bail and having remained on bail, in all probabilities, she is likely to continue her bootlegging activities and thereby, the detention order is necessary. The said observation clearly suggests that the detaining authority has not considered the aspect of less drastic remedy like cancellation of bail as available under Section 437(5) of CrPC before passing the impugned order and thereby also, it is difficult to sustained the order.

##. As the petition succeeds on the aforesaid grounds alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 26-5-99

passed by respondent No.1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - SMT. SUKHIBEN W/O CHHIMAKABHAI BHANABHAI PATEL is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 31-1-2000 [A.K.Trivedi, J.]

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